

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

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Bankruptcy Caption: In re Floyd & Davia Parker

Bankruptcy No. 98 B 15184

Date of Issuance: December 7, 1999

Judge: Ginsberg

Appearance of Counsel: Mark R. Schottler, Attorney for Debtors

Attorney for Movant: Elaine Jensen, Ch. 13 Trustee

**Attorney for Respondent: Stephanie Cummings, Cook County States
Attorney**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Case No. 98 B 15184
)	
Floyd and Davia Parker,)	Chapter 13
Debtors.)	
)	Hon. Robert E. Ginsberg

MEMORANDUM OPINION AND ORDER

On November 10, 1998, the Illinois Department of Public Aid (“IDPA”) filed a proof of claim asserting a \$3,565 priority claim. Jack McCullough, the former Chapter 13 Trustee in this case, objected to IDPA’s proof of claim. For the reasons stated below, the court sustains the Trustee’s objection to IDPA’s claim.¹

Facts

On February 15, 1993, LaCrystal Brown gave birth to a child. The child’s father is Floyd Parker, one of the debtors in this chapter 13 case.² Floyd Parker is obligated to pay child support to Ms. Brown. As of the date of the chapter 13 petition, May 14, 1998, Floyd Parker owed Ms. Brown \$3,565 in past due child support payments. Under the Aid to Families with Dependent Children, 305 ILCS 5/4-1 *et. seq*, Illinois made payments to Ms. Brown to support her and her child. To reimburse the State for the payments it made to her, Ms. Brown assigned \$1,297 of the \$3,565 claim for child support arrears owed to her by the Debtor to IDPA.

¹ Elaine Jensen succeeded Jack McCullough as a standing chapter 13 trustee for the Northern District of Illinois on July 23, 1999. Ms. Jensen has adopted the former trustee’s opposition to the IDPA’s claim.

² Although both Floyd and Davia Parker are debtors in this case, the instant proceeding involves only Floyd Parker. Therefore, for the sake of convenience, if not accuracy, this opinion will refer to Floyd Parker as “the Debtor.”

On November 10, 1998, IDPA filed a proof of claim in this bankruptcy case, asserting a \$3,565 priority claim for child support. The Trustee objects to IDPA's claim, asserting that the \$1,297 of the claim that was assigned to IDPA is not entitled to priority under section 507(a)(7) of the Bankruptcy Code. 11 U.S.C. sec. 507(a)(7).³

Jurisdiction

This Court has jurisdiction over this matter under 28 U.S.C. § 1334(b) as a matter arising under section 502 of the Bankruptcy Code. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B) concerning the allowance of a claim against the estate. This matter is before the Court pursuant to former Local Rule 2.33, now known as Internal Operating Procedure 15(a), of the United States District Court for the Northern District of Illinois, automatically referring bankruptcy cases and proceedings to this Court for hearing and determination.

Discussion

IDPA contends that in order for the Debtor to get an effective fresh start, its entire claim must be given priority treatment. If the entire IDPA claim is entitled to priority status, the Debtor's chapter 13 plan cannot be confirmed unless it provides for payment in full of IDPA's claim. 11 U.S.C. sec. 1322(a)(2). If, on the other hand, a portion of IDPA's claim is not entitled to priority treatment, it may not be paid in full during the chapter 13 case. In addition, claims for child support are generally nondischargeable in bankruptcy cases. 11 U.S.C. sec. 523(a)(5). Thus, if the \$1,297 claim is nondischargeable, it will survive the Debtor's Chapter 13 discharge.

³ The Trustee does not object to the IDPA's priority claim to the balance of the \$3,565 owed by the Debtor to the IDPA. Accordingly, all that is in issue in the instant proceeding is the \$1,297 portion of the IDPA's claim.

Accordingly, even after bankruptcy, the Debtor will have to pay the \$1,297 voluntarily or face the risk of coercive collection by the IDPA.

The Trustee, on the other hand, contends that to the extent that Ms. Brown assigned her claim for child support to IDPA, the claim lost its right to priority payment.

Section 507(a)(7) of the Bankruptcy Code was added to the Bankruptcy Code in 1994 by Pub. L. No. 103-394 sec. 304(c). At first blush, it appears that section 507(a)(7) of the Bankruptcy Code controls the resolution of the issue before the Court. Section 507(a)(7) of the Bankruptcy Code provides that certain kinds of claims are entitled to priority payment in bankruptcy cases, specifically:

allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or
(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support. 11 U.S.C. sec. 507(a)(7).

Section 507(a)(7) of the Bankruptcy Code has been analyzed by several courts faced with issues similar to those now before this Court. Despite the lack of any apparent ambiguity in section 507(a)(7) of the Bankruptcy Code, the cases do not all reach the same result. *Compare In re Burns*, 216 B.R. 945 (Bankr. S.D. Cal. 1998) with *In re Beverly*, 196 B.R. 128 (Bankr. W.D. Mo. 1996).

In re Burns, 216 B.R. 945 (Bankr. S.D. Cal. 1998), represents one view with respect to the interpretation of section 507(a)(7) of the Bankruptcy Code. In *Burns*, the debtors sought to modify their chapter 13 plan to separately classify prepetition claims for child support which had

been assigned to a government entity from other unsecured claims in order to pay the prepetition claims for child support in full while paying nothing on the other unsecured claims. The court recognized that support claims that have been assigned are treated differently by the plain language of sections 523(a)(5) and 507(a)(7) of the Bankruptcy Code.⁴

The major difference is that section 507(a)(7) of the Bankruptcy Code, which deals with the priority to be afforded support claims, excludes support claims that have been assigned to another entity from receiving priority treatment. By the same token, section 523(a)(5) of the Bankruptcy Code deals with the dischargeability of support claims. Section 523(a)(5) of the Bankruptcy Code provides that while most obligations for support are nondischargeable, if the claim for support has been assigned to another entity, it is dischargeable. 11 U.S.C. sec. 523(a)(5). However, section 523(a)(5) of the Bankruptcy Code contains what might be deemed an exception to the exception from dischargeability for support claims. If a support claim is assigned to a governmental entity, it is nondischargeable. 11 U.S.C. sec. 523(a)(5)(A). There is no analogous exception to the exception in section 507(a)(7) of the Bankruptcy Code. Some

⁴Section 523(a)(5) of the Bankruptcy Code provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that --

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt included a liability designated as alimony, maintenance or support, unless such liability is actually in the nature of alimony, maintenance or support.

11 U.S.C. § 523(a)(5).

courts have regarded the absence of an exception to the exception in section 507(a)(7) of the Bankruptcy Code as a legislative gaffe. Not so the *Burns* court. The court stated:

“Although some courts have assumed this was an oversight (citations and footnote omitted), this Court believes if Congress intended to accord priority status to assigned support debts, it has amended the Bankruptcy Code a sufficient number of times since 1981 to have made the appropriate change.” *Id.* at 947.

Relying on the plain language of section 507(a)(7) of the Bankruptcy Code, the *Burns* court found that the claim for child support was nondischargeable but was not, nevertheless, entitled to priority treatment. *Id.* at 947.

The *Burns* court next turned its attention to the question of whether the support claim could be classified separately from other general unsecured claims. The court found that nondischargeability was not a sufficiently reasonable basis to discriminate between classes of dischargeable and nondischargeable debt. Accordingly, a Chapter 13 plan that proposed to pay as much as possible to the holders of nondischargeable claims and little or nothing to holders of dischargeable claims so that the debtor would emerge from Chapter 13 with his/her nondischargeable claims reduced as far as possible, discriminated unfairly against the holders of dischargeable claims by requiring them, in effect, to pay the debtor’s nondischargeable debts. Moreover, Congress did not give blanket priority to nondischargeable debts in Chapter 13 cases. Accordingly, the debtor’s motion to modify his Chapter 13 plan in *Burns* had to be denied. *Id.* at 947-948. This Court has agreed with the *Burns* court’s reasoning with regard to unfair discrimination. *In re Chapman*, 146 B.R. 411 (Bankr. N.D. Ill. 1992)(Chapter 13 plan could not use separate classification to unfairly discriminate between nondischargeable student loan debt and other unsecured debt.)

However, not all courts have agreed that separate classification of nondischargeable and dischargeable claims is prohibited in Chapter 13 plans. For example, the court in *In re Beverly*, 196 B.R. 128 (Bankr. W.D. Mo. 1996), reached a different conclusion on the question than that reached by the *Burns* court. In *Beverly*, the debtor's proposed chapter 13 plan treated his child support obligations as nonpriority debts. A child support creditor objected to confirmation of the debtor's plan on the basis that a child support claim is entitled to priority treatment. In its analysis of section 507(a)(7) of the Bankruptcy Code, the *Beverly* court found it useful to also consider section 523(a)(5) of the Bankruptcy Code, which deals with the dischargeability of claims for alimony, maintenance or support of a spouse, former spouse or child. According to the *Beverly* court,

“[S]ection 507(a)(7) is nearly identical to section 523(a)(5), except that section 523(a)(5) provides two exceptions to the exception as to assignments, whereas section 507(a)(7) does not.” *Id.* at 131.

The *Beverly* court noted that under section 523(a)(5) of the Bankruptcy Code, a claim for alimony, maintenance or support which has been assigned to a private party can be discharged. If the claim has been assigned to a governmental entity, however, the claim cannot be discharged. The *Beverly* court found that the “omission of the exception to the exception” from section 507(a)(7) of the Bankruptcy Code was meaningless if sections 507(a)(7) and 523(a)(5) of the Bankruptcy Code were read together. The *Beverly* court stated:

Section 523(a)(5)(A) still mandates that claims for child support which were assigned to a government agency are nondischargeable. And as several courts (including the Eighth Circuit (footnote omitted)) found prior to the addition of section 507(a)(7) to the Act, those claims are to be given preferential treatment in a Chapter 13 plan.... Such a claim should not be classified with other general unsecured debts receiving only a percentage of the claim. As such, a debt for child support which has been assigned to a government

agency should be treated as though it is a priority debt in a Chapter 13 plans: it should be paid in full.” *Id.* at 132.⁵

The *Beverly* decision is entirely dictum. The *Beverly* court found that the claim for child support arrears had not been assigned. Consequently, the court held that the claim for child support arrears was a nondischargeable, priority claim, and confirmation of the debtor’s plan was denied because the plan did not provide for payment in full of the priority claim over the life of the plan. *Id.* at 129. *See also In re Camacho*, 211 B.R. 744 (Bankr. D. Nev. 1997)(court notes in dicta that Congress intended child support debt which had been assigned to the state to be granted priority status.)

It is hard to see why a claim that is clearly not entitled to priority status should nevertheless be treated as if it were something it is not. The *Beverly* court’s conclusion that a claim for child support which has been assigned to a government entity is entitled to priority treatment is not supported by the plain language of section 507(a)(7) of the Bankruptcy Code.⁶ *U.S. v. Ron Pair Enterprises*, 489 U.S. 235 (1989). The *Beverly* court tortured the clear and unambiguous language of the statute by merging the separate concepts of nondischargeable claims and claims entitled to priority treatment. It is not inconsistent for a claim to be nondischargeable, yet not entitled to priority treatment. *See, e.g., In re Chapman*, 146 B.R. 411 (Bankr. N.D. Ill. 1992)(chapter 13 plan could not unfairly discriminate between nondischargeable student loan debt and other unsecured debt by affording the former priority over the latter in a chapter 13 plan in

⁵ Priority claims must be paid in full (albeit without interest) over the life of a Chapter 13 plan. 11 U.S.C. sec. 1322(a)(2).

⁶ There is no dispute in the instant proceeding that part of Ms. Brown’s claim for child support arrears has been assigned.

order to reduce as far as possible the amount of nondischargeable debts the debtor will have to deal with after completing the plan payments.)

The plain meaning of section 507(a)(7) of the Bankruptcy Code is to extend priority treatment to allowed claims for alimony, maintenance, or support owed to a spouse, former spouse, or child of the debtor. The claim must arise in connection with a separation agreement, divorce decree or other court order made in accordance with state law by a governmental unit, or arise in a property settlement agreement. However, the claim is not entitled to priority if it has been assigned to another entity, either voluntarily, by operation of law, or otherwise. 11 U.S.C. sec. 507(a)(7)(A). In addition, the claim will not be entitled to priority if the claim includes an obligation that is not actually in the nature of alimony, maintenance or support. 11 U.S.C. sec. 507(a)(7)(B). *See also* Collier on Bankruptcy, sec. 507.09 (15th ed. 1998). To read section 507(a)(7) of the Bankruptcy Code as affording priority to a support claim that has been assigned is to literally read section 507(a)(7)(A) of the Bankruptcy Code out of the statute. This Court should read a statute in a way that gives effect to the entire statute. *In re Bloomingdale Partners*, 170 B.R. 984, 989 (Bankr. N.D. Ill. 1994). This is particularly true when the plain meaning of the statute allows it to be read in a way that gives effect to all of the provisions of the statute.

IDPA is the holder of a claim against the Debtor for past due child support because Ms. Brown assigned a portion of her claim against the Debtor for past due child support to IDPA. The portion of the claim for child support arrears which has been assigned to the State of Illinois, \$1,297, is not entitled to priority treatment under section 507(a)(7) of the Bankruptcy Code. Neither the Chapter 13 Trustee nor IDPA have alleged that the \$2,268 balance of the claim for

past due child support has been assigned to IDPA. Thus, the \$2,268 balance of the claim is entitled to priority treatment under section 507(a)(7) of the Bankruptcy Code.

Conclusion

For the reasons stated, the chapter 13 trustee's objection to the claim of the IDPA is sustained. IDPA shall have a unsecured nonpriority claim for \$1,297 and an unsecured priority claim for \$2,268.

ENTERED:

Dated: December 7, 1999

Robert E. Ginsberg
United States Bankruptcy Judge